IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. ~~370~~ 24

WILLIAM P. ROGERS, SECRETARY OF STATE OF THE UNITED STATES OF AMERICA,

Appellant,

v.

ALDO MARIO BELLEI,

Appellee.

BRIEF OF ASSOCIATION OF AMERICAN WIVES OF EUROPEANS AND AMERICAN BAR ASSOCIATION, *AMICI CURIAE*

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Interest of *Amici Curiae*

The Association of American Wives of Europeans is an organization based in Paris, France, formed in 1961 and composed of female American nationals married to Europeans and living in Europe. In many cases the members are the mothers of children who have been born outside the United States and who, because their husbands are not American citizens, find that the citizenship of their children is governed by the provision of the Nationality Act which is here under review (8 U.S.C., § 1401(b)). Members of the Association are concerned that these children will lose their United States citizenship if circumstances prevent their return to the United States for five years' continuous presence between the ages of 14 and 28.

The American Bar Association, with the approval of its Board of Governors, joins in this Brief *Amici Curiae* in *Rogers* v. *Bellei*, pursuant to the written consent of the parties hereto, which is on file with the Court. There are basic principles of law involved in this case which are of vital concern to the Association and its membership of over 125,000 lawyers. As a national professional organization of lawyers dedicated "to advance the science of jurisprudence" and "to apply its knowledge and experience in the field of law to the promotion of the public good", the Association is interested in having presented to the Court its views on the questions involved in this case and joins in the reasons, both of authority and policy, for the support and affirmance of the decision of the Court below.

Question Presented

Whether Section 301(b) of the Immigration and Nationality Act of 1952 (8 U.S.C., § 1401(b)), providing that a person born abroad of one citizen-parent loses his American citizenship by failure to be physically present in the United States for five years continuously between the ages of 14 and 28, violates the due process clause of the Fifth Amendment or otherwise exceeds the powers of Congress under the Constitution.

Statement

The facts in this case have been stipulated and can be briefly summarized as follows:

The Appellee, Aldo Mario Bellei, was born in Ancona, Italy on December 22, 1939 of an American mother and an Italian father. At the time of his birth in Italy he became, and still is, a citizen of Italy. He also acquired American citizenship by reason of his birth abroad of an American citizen-parent under the terms of Section 1993 of the Revised Statutes, as amended by Section 1 of the Act of May 24, 1934, 48 Stat. 797.

The Appellee has lived for most of his life in Italy. He came to the United States on five brief visits but never established residence in this country. On his first two trips to the United States he travelled on his mother's American passport; on the next two occasions he travelled on his own United States passport. His American passport was periodically renewed until December 22, 1962, his twenty-third birthday. Thereafter he was informed that he had lost his United States citizenship by virtue of Section 301(b) of the Immigration and Nationality Act of 1952, which provides that a person born abroad of one American parent loses his citizenship unless he is physically present in the United States for five years continuously between the ages of fourteen and twenty-eight. On his fifth visit to the United States, in 1965, Appellee used his Italian passport and was admitted to our country as an alien visitor.

On March 28, 1960, the Appellee registered under the Selective Service laws of the United States with the American Consul in Rome, Italy. He was asked to report for a physical examination by the United States Army at Leghorn, Italy, and he passed this examination, but was deferred from military service because he was employed in an organization engaged in the NATO defense program. He later received a letter from the United States Selective Service declaring that, due to the loss of his American citizenship, he had no further obligations for military service.

Appellee brought this action for declaratory and injunctive relief against the operation of Section 301(b) on the ground that its provision for loss of citizenship is unconstitutional. A three-judge District Court granted his motion for summary judgment, declaring the statute void and confirming his continued American citizenship.

Summary of Argument

This Court has held that American citizens may not be deprived of their citizenship without their consent. *Afroyim* v. *Rusk*, 387 U. S. 253 (1967). It is true that this case involved a naturalized American, but there is no reason in law or policy to deny the same rights to foreign-born Americans. There is no doubt that Section 301(b) is a provision for involuntary expatriation. To require that a foreign-born citizen who wants to keep his citizenship must alter his established pattern of life and be physically present for five years in the United States does not leave the citizen a free choice. It constitutes that very deprivation of liberty without due process of law which is forbidden by the Fifth Amendment. Foreign-born Americans have the same constitutional right enjoyed by naturalized Americans to be free from a residence requirement which "drastically limits their rights to live and work abroad in a way that other citizens may". *Schneider* v. *Rusk*, 377 U. S. 163, 168-169 (1963).

Even if this provision for involuntary expatriation of foreign-born Americans is not held *ipso facto* unconstitutional, it violates the due process clause of the Fifth Amendment because it is unreasonable. The deprivation of liberty which the Section imposes on foreign-born Americans is a serious one and is not redeemed by the fulfillment of any valid national interest.

The concept that a person must be resident in the United States to demonstrate his identification with and allegiance to this country has never been accepted by our nation. Even if one were to grant, which we do not, that the residence requirement inserted into the law in 1934 for the foreign-born children of one citizen-parent had a reasonable basis at that time, it has been rendered obsolete by the subsequent revolution in world transportation and communications and by the transformation in America's world role. In the past forty years, the number of Americans resident abroad has grown from 100,000 to approx-

imately 2,000,000 (half that number if military personnel are excluded). There are large American communities with their own schools, churches and social clubs in most major cities of the world, and it cannot be seriously maintained that foreign-born Americans who grow up overseas necessarily lose touch with their American heritage. The child of one American citizen-parent growing up abroad has the same opportunity to maintain his American identity as the child of two citizen-parents and, in many cases, he and his parents wish that he do so.

These bi-cultural progeny of Americans overseas can render valuable service to their country working in United States Government agencies, business firms, educational institutions and international agencies. Rather than expatriate them against their will, we should welcome them as a national asset in an interdependent world.

ARGUMENT

I. Section 301(b) exceeds the power of Congress because it deprives Americans of their citizenship without their consent.

A. This Court has held that American citizens are constitutionally protected against involuntary expatriation.

This Court has already held that an American citizen may not be deprived of his citizenship without his consent.[1] In *Schneider* v. *Rusk*, 377 U. S. 163 (1963), the Court struck down a statutory provision declaring that a naturalized American loses his citizenship by three years' residence in his country of origin. In *Afroyim* v. *Rusk*, 387 U. S. 253 (1967), the Court held that Congress lacked

[1] One limited exception to this principle is the expatriation of a naturalized American who obtained his citizenship by fraud. This is clearly distinguishable from other kinds of involuntary expatriation because the person being deprived of citizenship obtained it through illegal means; he was not entitled to have it in the first place.

power to deprive a naturalized citizen of his citizenship because he voted in a foreign election. In the words of the opinion in *Afroyim*, "this Court has consistently invalidated on a case-by-case basis various other statutory sections providing for involuntary expatriation. It has done so on various grounds and has refused to hold that citizens can be expatriated without their voluntary renunciation of citizenship" (pp. 255-256).

The reasoning of the Court in *Schneider* was succinctly summarized as follows (pp. 168-169):

> "This statute proceeds on the impermissible assumption that naturalized citizens as a class are less reliable and bear less allegiance to this country than do the native born. This is an assumption that is impossible for us to make. Moreover, while the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is 'so unjustifiable as to be violative of due process.' *Bolling* v. *Sharpe*, 347 U. S. 497, 499. A native-born citizen is free to reside abroad indefinitely without suffering loss of citizenship. The discrimination aimed at naturalized citizens drastically limits their rights to live and work abroad in a way that other citizens may. It creates indeed a second-class citizenship. Living abroad, whether the citizen be naturalized or native born, is no badge of lack of allegiance and in no way evidences a voluntary renunciation of nationality and allegiance. It may indeed be compelled by family, business, or other legitimate reasons."

B. The citizenship of foreign-born Americans enjoys no less constitutional protection than that of native-born and naturalized Americans.

In an attempt to narrow the scope of the *Schneider* and *Afroyim* decisions, appellant argues that only "Fourteenth Amendment Citizens"—citizens born in the United

States or naturalized Americans—and not foreign-born Americans, are secure against involuntary loss of nationality.

The asserted distinction is without foundation. The fact that the citizenship of native-born and naturalized Americans is specified in the Fourteenth Amendment and the citizenship of persons born abroad of American parentage is conferred by statute provides no basis for holding that the latter class of citizens do not enjoy the same constitutional protection. The Fourteenth Amendment specifies that certain persons shall be citizens, but it is the Fifth Amendment, not the Fourteenth, which lays down the standards which the Federal Government must observe in the treatment of its citizens. The Fifth Amendment makes no distinction between the rights of Americans born or naturalized here and those born overseas. The *Schneider* opinion, in the language quoted above, clearly states that naturalized Americans have the same Fifth Amendment rights as native-born Americans. There is no justification for concluding that foreign-born Americans do not have these same rights. It would be anomalous indeed if a citizen born abroad of parents, one or both of whom were Americans, were held to have rights under the Constitution inferior to those of a naturalized American. In fact, the *Schneider* and *Afroyim* cases clearly reject any concept of "second-class citizenship." And we read *Afroyim* as holding that Congress has no power whatever to expatriate any citizen against his will.

That the citizenship of all American citizens—native-born, naturalized and foreign-born—stands upon the same footing becomes apparent when the matter is set in historical perspective. The Constitution, as has frequently been pointed out, did not define who were American citizens and who were not. It merely gave Congress authority in Article I, Section 8, Clause 4, to "establish a uniform rule of naturalization." Whether the power of Congress to

regulate citizenship derives from this provision or from other provisions of the Constitution is uncertain; for the purpose of this case, it does not matter. The point is that the Congressional power to regulate citizenship derives from the Constitution and is subject to Constitutional safeguards—including those in the Fifth Amendment.

In the absence of a provision in the original Constitution determining who were citizens of the United States, the Congress proceeded to enact legislation defining citizenship. In its very first enactment in this area, Congress granted citizenship to children born abroad of American parents as well as to those going through the naturalization process (Act of March 26, 1790, 1 Stat. 103). There is nothing in the early history of the United States to suggest that persons born abroad of American parents were regarded as enjoying less in the way of constitutional rights than other Americans. Drawing on the practice of Great Britain, the United States from the very beginning included citizens *jure sanguinis* as well as *jure soli*—and accorded full rights of citizenship to both.

It was not until 1868 that provisions defining American citizenship were written into the Constitution itself in the Fourteenth Amendment. Section 1 states: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and or the State wherein they reside." The purpose of this provision was a very specific one—to safeguard the liberties of Negro Americans by giving them the status of citizens. In the words of this Court in *Afroyim* (p. 262), "when the Fourteenth Amendment passed the House without containing any definition of citizenship, the sponsors of the Amendment in the Senate insisted on inserting a constitutional definition and grant of citizenship. They expressed fears that the citizenship so recently conferred on Negroes by the Civil Rights Act cou'd be just as easily taken away from them by subsequent Congresses, and it

was to provide an insuperable obstacle against every governmental effort to strip Negroes of their newly acquired citizenship that the first clause was added to the Fourteenth Amendment."

Since at that time there were doubtless no Negro Americans overseas the Amendment contained no reference to foreign-born Americans. From this omission we can scarcely infer a purpose to establish privileged categories of American citizenship—to give rights to native-born and naturalized Americans not enjoyed by those born abroad. There is nothing in the history of the Fourteenth Amendment to suggest that it was designed to create safeguards against involuntary expatriation for certain Americans and to deny these safeguards to other Americans.

In short, the Fourteenth Amendment left American citizens—whatever the source of their citizenship—in exactly the same position with respect to Federal power as they were theretofore, namely, protected by the due process provisions of the Fifth Amendment as well as other applicable constitutional provisions. It could hardly be otherwise. If, contrary to this reasoning, the Fourteenth Amendment itself were held to be the source of due process guarantees against involuntary expatriation by the Federal Government, then American citizens must have been without safeguards against involuntary expatriation for the first eighty years of the Republic.

Such a conclusion is not only dubious on its face, it is inconsistent with the trend of legislative debate and judicial authority between the founding of the Republic and the adoption of the Fourteenth Amendment. Three separate times, in 1794, 1797 and 1818, the Congress considered and then rejected legislation that would have recognized the right to voluntary expatriation. It also considered a Constitutional amendment, never ratified, that would have provided for loss of citizenship of a person accepting an office or emolument from a foreign government. The op-

ponents of the legislation providing for voluntary expatriation argued that Congress had no constitutional authority to provide for expatriation of any kind—voluntary or involuntary—and the fact that an amendment to the Constitution was drafted to provide for involuntary expatriation would seem to confirm that view, at least so far as involuntary expatriation is concerned. Although these inferences from the early history of our country are admittedly not decisive of the matter, they do receive important support from the dictum of Chief Justice Marshall in *Osborn* v. *Bank of the United States,* 9 Wheat. 738, 827 (1824), to the effect that once a person becomes an American citizen he cannot be deprived by Congress of that status:

> " '[The naturalized citizen] becomes a member of the society, possessing all the rights of a native citizen, and standing, in the view of the constitution, on the footing of a native. The constitution does not authorize Congress to enlarge or abridge those rights. The simple power of the national Legislature is, to prescribe a uniform rule of naturalization, and the exercise of this power exhausts it, so far as respects the individual.' "

This interpretation of the early history of our country, of course, is hardly original. This Court undertook a similar historical review in *Afroyim* v. *Rusk,* and concluded (p. 257):

> "First we reject the idea expressed in *Perez* that, aside from the Fourteenth Amendment, Congress has any general power, express or implied, to take away an American citizen's citizenship without his assent. This power cannot, as *Perez* indicated, be sustained as an implied attribute of sovereignty possessed by all nations. Other nations are governed by their own constitutions, if any, and we can draw no support

from theirs. In our country the people are sovereign and the Government cannot sever its relationship to the people by taking away their citizenship. Our Constitution governs us and we must never forget that our Constitution limits the Government to those powers specifically granted or those that are necessary and proper to carry out the specifically granted ones. The Constitution, of course, grants Congress no express power to strip people of their citizenship, whether in the exercise of the implied power to regulate foreign affairs or in the exercise of any specifically granted power. And even before the adoption of the Fourteenth Amendment, views were expressed in Congress and by this Court that under the Constitution the Government was granted no power, even under its express power to pass a uniform rule of naturalization, to determine what conduct should and should not result in the loss of citizenship."

The conclusion that American citizens born abroad enjoy the same protection against involuntary expatriation as other Americans is supported not only by history but by considerations of equity and common sense. If the view asserted by Appellant were accepted and the constitutionality of Section 301(b) sustained, it would mean that a child born in the United States of two visiting aliens can return with them to their native land and be an American for the rest of his life without any further presence in this country—that a child who becomes an American citizen through the naturalization of his parents can return with them to their native land and be an American for the rest of his life without any further presence in this country—but that a child born abroad of an American father or mother is deprived of his American citizenship unless he returns to this country for five years of physical presence between the ages of fourteen and twenty-eight. It would also mean that American children born abroad of

two American citizens could have their citizenship taken away from them by the enactments of some future Congress.

Such a distinction based solely upon the source of citizenship would be manifestly unfair and would serve no conceivable social policy. There is no magical alchemy of good citizenship worked on an infant child as a result of spending its first few days on American soil that should give it such an advantage over a child born of American parents overseas. Indeed, the child of an American parent nurtured overseas in a home where English is spoken and things American deeply valued will have ties to the United States at least as close as, for example, the child of aliens who happens to be born in the United States but who grows up abroad speaking no English and with no further contact with this country. Congress recognized this fact for years when it permitted the passage of American citizenship to children born abroad of American fathers without any requirement of residence in the United States, in accordance with Section 1993 of the Revised Statutes, before its amendment in 1934.

Appellant seeks to justify the involuntary expatriation of foreign-born Americans by arguing that since Congress has the power to establish a five-year residence requirement as a condition precedent to the acquisition of citizenship for persons born abroad of one citizen-parent it must also have the power to take away American citizenship from such persons for failing to comply with the residence requirement. The premise is correct, but the conclusion does not follow. To lay down a condition which a person must comply with before he becomes a citizen is one thing; to take away a person's citizenship for failing to comply with a condition is another. No issue is made here of the constitutionality of the requirement that the child born abroad of one American citizen-parent is born an American citizen only if the citizen-parent previously was phys-

ically present for ten years in the United States. 8 U.S.C., §1401(a)(7).

To be born an American citizen is almost universally recognized to be a valuable privilege. It is part and parcel of the citizen's image and world-view; he is "psychologically American". To deprive that person of his citizenship without his consent may be to subject him to a serious emotional and psychological deprivation. Involuntary expatriation, of course, works more tangible hardships. American citizenship is a practical asset. To take just two examples, it carries with it a right to United States diplomatic protection and access to certain kinds of employment denied to non-Americans. American citizenship also imposes certain obligations, among them the obligation of military service and a liability to American taxation and judicial process not borne by non-Americans. After enjoying these rights and accepting these obligations for twenty-three years (including the obligation of military service, for which he took a physical examination in Italy), Appellee is told his citizenship is abruptly withdrawn. A right is thus taken away which Appellee not only values highly but which he has paid for by his willingness to accept the obligations of citizenship for more than two decades. It is precisely the injustice of this situation that distinguishes the involuntary deprivation of citizenship already granted from the setting of conditions precedent to the acquisition of citizenship.

There is another fundamental reason for the distinction. This is the concern, reflected in the recent opinions of this Court, that if involuntary expatriation is permitted for one purpose it would open the door to involuntary expatriation for other purposes, thus providing a back-door device for undermining the fundamental liberties which the Constitution guarantees to all Americans. As the Court said in *Afroyim* (p. 268): "The very nature of our free government makes it completely incongruous to have

a rule of law under which a group of citizens temporarily in office can deprive another group of citizens of their citizenship". See *Kennedy* v. *Mendoza-Martinez*, 372 U. S. 144 (1963), where this Court, by a divided vote, held that it was beyond the power of Congress to strip an American of his citizenship automatically and without prior judicial or administrative proceeding because he left the United States in time of war to avoid military service, thus depriving him of the procedural safeguards of the Fifth and Sixth Amendments. Even Justice Stewart, dissenting on the grounds that flight to avoid military service was a manifestation of non-allegiance, noted his concern that the withdrawal of citizenship had to be strictly limited: "Withdrawal of citizenship is a drastic measure. Moreover, the power to expatriate endows government with authority to define and to limit the society which it represents and to which it is responsible". 372 U. S. 144 at 214. See also *Trop* v. *Dulles*, 356 U. S. 86, at 92-93 (1958).

C. Section 301(b) is a provision for involuntary expatriation.

Appellant seeks to treat Section 301(b) as if it were merely a provision for the voluntary relinquishment of citizenship. It is argued that Appellee's failure to abide by the five-year residence requirement amounts to "voluntary" renunciation of citizenship. But such an interpretation alters the meaning of "voluntary" beyond recognition. The fact is that Appellee does *not* want to abandon his American citizenship. To say that he can retain his citizenship only by residing for five years in the United States does not leave him a free choice. For Appellee, and for thousands of others similarly situated, the requirement of five years of residence in the United States between the ages of fourteen and twenty-eight may impose serious hardships—expenses beyond his capacity to bear, enforced separation from his family and loved ones, the sacrifice of a valuable job or the postponement of a

preferred career. If this Court had accepted this argument of Appellant, it would no doubt have held that Angelika Schneider was not involuntarily expatriated because she could have retained her citizenship by not returning to Germany, and it would have held that Mr. Afroyim voluntarily relinquished his citizenship by voting in Israel. In fact, the Court rejected this argument by finding that the statutory residence requirement for naturalized Americans "drastically limits their rights to live and work abroad in a way that other citizens may." *Schneider* v. *Rusk*, 377 U. S. 163, 168-169. A requirement that dual nationals choose between American and foreign citizenship by a simple oral or written statement might raise no constitutional problem, but the residence requirement in the present case, no less than the residence requirement in the *Schneider* case, by forcing an American citizen to choose between loss of citizenship and disruption of his preferred pattern of life, constitutes that very deprivation of liberty without due process of law which is forbidden by the Fifth Amendment.

II. Section 301(b) violates the due process clause of the Fifth Amendment because it is unreasonable.

For the reasons set out above, we believe that the Fifth Amendment prohibits the involuntary expatriation of foreign-born as well as native-born and naturalized Americans and that Section 301(b) is unconstitutional on this ground alone. If, however, this Court is not prepared to hold that Congress has no power of involuntary expatriation, we believe it should find that the Section violates the due process clause of the Fifth Amendment because it is unreasonable. Appellant's brief concedes that the constitutionality of Section 301(b) cannot be sustained unless it is a reasonable regulation.

This Court noted in the *Schneider* case that "while the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is 'so unjustifiable as to be violative of due process.' *Bolling* v. *Sharpe*, 347 U. S. 497, 499." 377 U. S. 163, 168. The question, then, is whether discrimination against foreign-born Americans, subjecting them to a residence requirement not imposed on other Americans, is justifiable or reasonable within the terms of the Fifth Amendment.

There is no simple formula that will yield an answer to this question. What is involved, of course, is a matter of judgment, weighing the deprivation of liberty which the Section imposes on foreign-born Americans against the benefits, if any, which the Section yields in terms of legitimate national interests. We submit that when the question is looked at in this way, the Section fails to meet the test of reasonableness, for it imposes a serious deprivation of liberty which is not redeemed by the achievement of any valid social purpose in the drastically altered world conditions in which we find ourselves today. Indeed, there is reason to believe that the Section is actually counterproductive in terms of the national interest.

A. Section 301(b) imposes a serious deprivation of liberty.

Appellant seeks to create the impression that the requirement of five years' physical presence between the ages of 14 and 28 is one that can be complied with without serious inconvenience. For large numbers of foreign-born Americans, this is not so. At 14, the foreign-born child of mixed parentage is normally enrolled in a high school overseas which he does not finish until he is 17 or 18 (18 or 19 if the school is a European-style lycée or Gymnasium). To withdraw the child in the middle of his high school education and send him back to the United States to start in a new school separated from his parents would not only be a

hardship for the entire family—financially and emotionally; quite possibly, it could be harmful to the child from an educational point of view.

The most rational way to satisfy the residence requirement might appear to be through pursuing University education in the United States. But the cost of such education is now extremely high; when room and board and spending money as well as tuition are included, it runs to $3,000 or more each year, plus the cost of round trip transportation home during summer vacation ($300-$600, depending on family's place of residence). These costs are beyond the reach of many families of American-born children abroad, particularly when the wife is an American married to an alien living on a foreign pay scale. Moreover, the families here involved have few opportunities to limit these costs: there is often no one in the United States with whom the children can live while at the University; United States government travel grants are available only for foreign students; not being residents of any state the children often have difficulty getting places in tuition-free state Universities or finding scholarship aid. When two or more children are involved the possibility of sending all to United States universities becomes even more remote. Indeed, in a very real sense the Section is discriminatory because it bears with particular severity on children of poor and middle-income families.

For foreign-born children in the situation described above the opportunity to satisfy the residence requirement arises, therefore, after University education overseas has been completed. This means after the age of 21 or 22. But at this stage the most attractive, perhaps the only, possibilities for productive employment (or post-graduate study and research) may be overseas. There may be personal as well as professional reasons for remaining abroad —a fiancé, a circle of friends, parents and relations, or simply the desire to remain in the familiar environment in

which the child grew up. In these circumstances to tell the foreign-born American that he must return for five years' residence is to impose upon him an agonizing choice.

It is not contended, of course, that all, or even a large majority of foreign-born Americans find it so difficult to satisfy the residence requirement. But many of them do. And for certain individuals the burden—financially, professionally, emotionally—is so severe as to constitute a serious deprivation of liberty within the meaning of the Fifth Amendment.

B. Section 301(b) serves no rational public policy in the changed circumstances of today.

Appellant argues that Section 301(b) serves a rational public policy because it assures that the beneficiary of citizenship status will "demonstrate, in a reasonable manner, his identification with and allegiance to this country" (Brief, p. 20). As we noted earlier, no such residence requirement is imposed upon the American-born children of alien parents or the children of naturalized Americans in order to demonstrate their "identification with and allegiance to" this country. What rational policy is served by imposing this requirement on the foreign-born American? We submit that there is none.

The concept that a person must be resident in our country to demonstrate his identification with and allegiance to it has never been accepted by our nation. As we noted earlier, the United States from the earliest days granted citizenship to children born abroad of two American parents with no residence requirement at all. For years we granted citizenship to children born abroad of American fathers without a residence requirement. It was only when Congress liberalized the law to permit the passage of citizenship abroad through an American mother that the residence requirement for foreign-born Americans was imposed. This was apparently based on the assumption

that the foreign-born children of American mothers were somehow less likely to be good citizens than the foreign-born children of American fathers—a dubious assumption at best, since a mother's influence on a child is at least as great as that of its father. And no residence requirement has ever been imposed on children born in the United States—even of alien parents.

Whatever validity the residence requirement may have had as a test of allegiance and identification for foreign-born children of one citizen-parent when it was originally inserted, it has no validity today. The circumstances of 1970 are not those of 1934. The revolution in transportation and communication has rendered obsolete whatever validity may have once attached to residence as a test of allegiance. In a world of jet aircraft, of television via satellite, of unprecedented economic, political and cultural interdependence, with large numbers of persons serving their governments and private institutions overseas, the fact of residence in one country does not necessarily imply allegiance to that country or preclude allegiance to the country of which they are citizens.

This is particularly true today of Americans overseas. In the last 40 years the position of the United States in the world has changed beyond recognition. Then we were inward-looking, isolationist, still preoccupied with establishing a national identity out of millions of new immigrants, perhaps unsure of the capacity of our culture to withstand competition with foreign cultures. Today we are a global power and our presence is felt in almost every corner of the world. There is no longer any basis for the view that an American citizen residing abroad will necessarily have his national cultural background obliterated by foreign cultures. To the contrary, the cultural influence of the United States is too strong to be ignored by any one—including its own citizens. Americans residing abroad, whether married to an American or not, are unquestion-

ably able to transmit their language, culture and national outlook to their children, just as if they were residing in the United States. Indeed, in the principal cities of the world where most of the overseas Americans are resident, their children not only can (and usually do) attend American schools, churches and social clubs, but also absorb the other aspects of American society—American movies and TV programs (standard fare in foreign cinemas and TV networks), chewing gum, coca cola, blue jeans, baseball, and rock music.

Indeed, there are large pieces of America in most of the cities of the world today. The reasons are obvious, but they are made more graphic by a few statistics. In 1900 the number of Americans residing abroad was 91,219. In 1930 it was 89,453. In 1940 it was 118,933. By 1950 the number had grown to 481,545 and by 1960 to 1,372,066. Rubin, "A Statistical Overview of Americans Abroad," in *Americans Abroad, Annals of the American Academy of Political and Social Science* (November, 1966, p. 2). According to information received on December 24, 1969 from the Office of the Under Secretary of State for Administration, based on U. S. consular records, there are now about 940,000 non-military U. S. citizens overseas plus 92,500 U. S. civilian government employees and their dependents. When to these figures there are added U. S. military forces abroad the total U. S. population resident overseas is close to 2 million.

Paradoxically, the problem attendant upon this development that has preoccupied many observers has not been that this vast overseas population has lost its American identity but that, on the contrary, it has preserved it so successfully as to pose major political and cultural problems for the host countries. One authoritative survey of postwar developments puts the matter as follows:

> "Europe soon had a fluctuating population of around a million Americans, and the number of these tempo-

rary or semipermanent residents swelled every summer by still another million eager tourists. Their impact caused growing concern over the possibly dire consequences of what their hosts fearfully called the Americanization of Europe.

As families were able to join army men stationed abroad and thousands of government officials on relief projects took off for Europe, small American communities grew up whose 'Stateside' standards of living cut them off almost completely from the country in which they were situated. With little or no interest in learning a foreign language and all facilities provided them, these unwilling residents abroad transferred suburbia across the Atlantic—its schools, churches, supermarkets, moving picture theaters, and country clubs. They were prepared to accept Europe only so far as it did not mean any real change in their own way of life."

Foster Rhea Dulles, "A Historical View of Americans Abroad," *id.* at p. 11.

One preoccupation of the Congress when it drafted Section 301(b) may have been that the foreign-born American child might not have an American education and might not even know the English language. But one of the central preoccupations of the vast array of Americans overseas has been to provide an American education for their children. The International Schools Services has compiled a list of 319 American primary and secondary schools abroad in cities from Abu Dhabi to Zugerberg. (This is not counting the hundreds of schools maintained overseas by the U. S. military establishment.) There are 27 of these schools in Switzerland alone, 14 in Italy, 11 in Mexico, 8 in Nigeria and 7 in India. There are in addition a number of excellent institutions of higher learning following American curricula such as the American College of Switzerland, the American College in Paris, the Schiller College in Ger-

many, the American College in Jerusalem and the University of the Americas in Mexico City, not to mention American universities established primarily for the education of foreign nationals such as the American University of Beirut. Of the situation in Europe, where most of the Americans residing abroad are located (apart from our military forces), one observer noted:

> "Keeping the kids American in Europe, however, especially if they go to an American school, is no problem. In fact some American children abroad (like most U. S. Army and Air Force children in Europe) have little enough real exposure to the country in which they live. They study a European language four hours per week in school, ride European buses, read European signs, tramp European sidewalks. But their study time, leisure time, playmates, and preoccupations are twice-distilled American. Many return home virtually untouched by life abroad and speaking no new language. There are exceptions. Depending on location, their own age and personalities, and their parents' attitudes, children can pick up both the language and the 'feel' of a country and its thought patterns. When they return home to high schools or colleges these youngsters will merge into the American scene."
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> Creary, *The Americanization of Europe* (New York, 1964), pp. 242-243.

It is true, of course, that the arguments above have their greatest force with regard to children whose parents are both American citizens. But they also show that the possibilities for an American education or at least a strong American identification may also be great for the child of an American father or mother who is married to an alien. Certainly, there is no basis for assuming that the child of only one citizen-parent is destined to lose his American

identity. Indeed, there is ample evidence to the contrary. Some 350 American women in Paris formed "The Association of American Wives of Europeans", *Amicus curiae* herein, precisely in order to maintain a rich American heritage for their children. Considering themselves "the unofficial representatives abroad of their native land," these women organized English reading classes for their children, lectures on American topics, and celebrations of American holidays. A survey conducted by this organization of 25 families with American wives and European husbands showed that all the mothers spoke English and all but 2 of the fathers did the same. More important, 26 of the 47 children of these families either spoke English as the primary language or spoke English and French with equal fluency. Only 5 of the children spoke only French. Metraux, "A Study of Bilingualism Among Children of U. S.-French Parents," *The French Review,* Vol. XXXVIII, No. 5 (April, 1965). This organization estimates that there are some 6,000 to 8,000 American women around the world married to foreign husbands. There is every reason to believe that many of them are just as intent to preserve the American heritage of their children.

Even if Americans with children growing up abroad were not determined to pass on their American cultural heritage, American culture is now so pervasive that American children overseas would be likely to absorb its essential features. Indeed, the old concept of the rigid separation of cultures is no longer valid. American culture is intermingling with foreign cultures. In almost every major city of the world, American newspapers, American TV, American films, American business organizations, American schools and, most important of all, American ideas are a major influence:

> "(O)n European television U. S. Westerns and private eyes are the most popular programs. For better or worse, American movies, now as before, are

a major mass opiate or mass stimulation which, in the process of entertainment, conveys American attitudes, values, and styles—or at least those borne by television and theater films. . . . U. S. books, in English and in translation, are common. . . . In Amsterdam, over a bottle of the fierce local gin, two sculptors and a painter debate the undue influence the New York Museum of Modern Art exerts on their world. . . . In Brussels, meanwhile, where the Common Market headquarters is established, the Common Market Commission's regulations are modeled on U. S. antitrust thinking and experience. . . . It is all of the above, along with the spread of jukeboxes and ducktail haircuts, that Europeans and Americans refer to when they speak of the Americanization of Europe. . . . The thing to note is that in America youngsters in changing Europe most readily find behavioral patterns and postures they want."

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"Today, when new technology can cross the Atlantic in some six months to a year, an armored division in sixty hours, a new joke in twenty-four hours, and a guided missile in half an hour, more and more Europeans are discovering that parts of the once distant American dream are no dream at all—they are everyday reality in Europe. This is awakening the Europeans to just how much they, while remaining themselves, are changing, becoming part of what is now a joint American-European experiment."

Creary, *op. cit.*, pp. 250-251, 256, 262.

C. The Americans involuntarily expatriated by Section 301(b) are a valuable national asset.

Section 301(b) is a provision that might be satisfactory for Guatemala, Nepal and Korea. It might even be con-

ceivable for Mexico, Norway or Pakistan. It is not appropriate for a global power like the United States, which needs citizens who have the desire and the ability to work abroad. It is no accident that the two other Western countries that in our time have played a global role—Britain and France—do not have residence requirements of any kind for foreign-born children of one citizen-parent.

The United States now maintains diplomatic relations with over one hundred foreign countries. We are members of more than seventy international organizations. We give military or economic assistance to over fifty foreign countries. Our business firms have more than $100 billion invested abroad. We need qualified people to represent our government and our private organizations in these and other relationships.

Some of the best qualified are precisely the American children born abroad of one citizen-parent affected by Section 301(b). While retaining a strong American identity, they are usually bilingual, with a particular capacity to operate effectively in a foreign environment. They have precisely the "cross-cultural" facility that is essential to effective United States operations overseas. This is a facility that is hard to teach and one that our country has often found in short supply. See Cleveland and Mangone, *The Art of Overseamanship* (1957). Moreover, quite apart from their special skills, the overseas American children are likely to constitute a highly desirable segment of the population:

> "On the basis of data available from the 1960 Census it is quite apparent that Americans overseas constitute a very special segment of the parent population. The overseas group is, on the whole, younger, better educated, and probably more remuneratively employed than the national population." Rubin, "A Statistical Overview of Americans Abroad." *op. cit.*, p. 9.

The number of cases where hardship is worked by Section 301(b) is destined to grow with the increase in the number of Americans born abroad of mixed parentage. In each of these cases the residence requirement not only hurts the individuals involved; it serves no rational public policy, because the persons affected by it are tied strongly to the United States by family background and education. Moreover, they are uniquely qualified to serve United States interests in United States companies abroad, in United States government programs and in international agencies and are frustrated in their desire to do so by an obsolete provision conceived in an era when such companies, programs and agencies were few or non-existent.

It is time to bring American law and policy into line with current needs as well as constitutional requirements. America needs its bicultural progeny overseas. Rather than expatriate them against their will or deny them the same rights as other citizens, we should recognize them for what they are—a valuable national asset in an increasingly interdependent world.

CONCLUSION

The judgment of the District Court should be affirmed.

Respectfully submitted,

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